

(d) When the contracting officer has been notified within the 15-day period that the SBA has appealed to the agency head, the head of the contracting activity (or designee) shall forward justification for its decision to the agency head. The contracting officer shall suspend contract action until notification is received that the SBA appeal has been settled.

(e) The agency head shall reply to the SBA within 30 working days after receiving the appeal. The decision of the agency head shall be final.

(f) A request to suspend action on an acquisition need not be honored if the contracting officer determines that proceeding to contract award and performance is in the public interest. The contracting officer shall include in the contract file a statement of the facts justifying the determination, and shall promptly notify the SBA representative of the determination and provide a copy of the justification.

[60 FR 48261, Sept. 18, 1995]

19.506 Withdrawing or modifying set-asides.

(a) If, before award of a contract involving a set-aside, the contracting officer considers that award would be detrimental to the public interest, (e.g., payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.

(b) If the agency small business specialist does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small business specialist and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides

(see 19.507) or dissolution of set-asides under \$100,000.

(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a set-aside and include it in the contract file.

[60 FR 48262, Sept. 18, 1995]

19.507 Automatic dissolution of a set-aside.

(a) If a set-aside acquisition or portion of an acquisition is not awarded, the unilateral or joint determination to set the acquisition aside is automatically dissolved for the unawarded portion of the set-aside. The required supplies and/or services for which no award was made may be acquired by sealed bidding or negotiation, as appropriate.

(b) Before issuing a solicitation for the items called for in a small business set-aside that was dissolved, the contracting officer shall ensure that the delivery schedule is realistic in the light of all relevant factors, including the capabilities of small business concerns.

[48 FR 42240, Sept. 19, 1983, as amended at 50 FR 1743, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

19.508 Solicitation provisions and contract clauses.

(a) [Reserved]

(b) [Reserved]

(c) The contracting officer shall insert the clause at 52.219-6, Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides (see 19.504(a)(2)). The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f) (4) and (5)).

(d) The contracting officer shall insert the clause at 52.219-7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides (see 19.504(a)(4)). The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f) (4) and (5)).

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business or if the contract is to be awarded under subpart 19.8, except those awarded using simplified acquisition procedures in part 13.

(f) The contracting officer shall insert the clause at 52.219-15, Notice of Participation by Organizations for the Handicapped, in solicitations and contracts issued through September 30, 1993, involving total or partial small business set-asides.

[48 FR 42240, June 9, 1987, as amended at 52 FR 21902, June 9, 1987; 52 FR 38189, Oct. 14, 1987; 53 FR 27464, July 20, 1988; 53 FR 43390, Oct. 26, 1988; 54 FR 25063, June 12, 1989; 55 FR 25529, June 21, 1990; 55 FR 38516, Sept. 18, 1990; 60 FR 34757, July 3, 1995; 60 FR 48262, Sept. 18, 1995; 61 FR 39209, July 26, 1996]

Subpart 19.6—Certificates of Competency and Determinations of Eligibility

19.601 General.

(a) A Certificate of Competency is the certificate issued by the Small Business Administration (SBA) stating that the holder is responsible (with respect to all elements of responsibility, including but not limited to capability, competency, capacity, credit, integrity, perseverance, and tenacity) for the purpose of receiving and performing a specific Government contract.

(b) The COC program empowers the Small Business Administration (SBA) to certify to Government contracting officers as to all elements of responsibility of any small business concern to receive and perform a specific Government contract. The COC program does not extend to questions concerning regulatory requirements imposed and enforced by other Federal agencies.

(c) Under this program, SBA may certify to Government contracting officers that an otherwise qualified small business concern is an eligible Government contractor under the Walsh-Healey Public Contracts Act. Requirements of the Walsh-Healey Public Contracts Act are covered in subpart 22.6. For information regarding the con-

tracting officer's responsibility to determine that a contractor is eligible or ineligible, see 22.608-2(f)(3).

(d) Contracting officers, including those located overseas, are required to comply with this subpart for U.S. small business concerns.

[48 FR 42240, Sept. 19, 1983, as amended at 51 FR 2664, Jan. 17, 1986; 54 FR 34754, Aug. 21, 1989; 59 FR 67036, Dec. 28, 1994]

19.602 Procedures.

19.602-1 Referral.

(a) Upon determining and documenting that a responsive small business lacks certain elements of responsibility (including, but not limited to, competency, capability, capacity, credit, integrity, perseverance, and tenacity), the contracting officer shall—

(1) Withhold contract award (see 19.602-3); and

(2) Refer the matter to the cognizant SBA Regional Office in accordance with agency procedures, except that referral is not necessary if the small business concern—

(i) Is determined to be unqualified and ineligible because it does not meet the standard in 9.104-1(g); *provided*, that the determination is approved by the chief of the contracting office; or

(ii) Is suspended or debarred under Executive Order 11246 or subpart 9.4.

(b) If a partial set-aside is involved, the contracting officer shall refer to the SBA the entire quantity to which the concern may be entitled, if responsible.

(c) The referral shall consist of—

(1) A notice that a small business concern has been determined to be non-responsible, specifying the elements of responsibility the contracting officer found lacking; and

(2) If applicable, a copy of the solicitation, drawings and specifications, preaward survey findings, pertinent technical and financial information, abstract of bids (if available) and any other pertinent information that supports the contracting officer's determination.

(d) For any single acquisition, the contracting officer shall make only one